

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC.,	)	Civil Action No. 04-CV-10421-JLT
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
HEALTHY SOLUTIONS, L.L.C., et al.,	)	
	)	
Defendants.	)	
CAPPSEALS, INC.,	)	
	)	
Plaintiff-in-Intervention,	)	
	)	
v.	)	
	)	
HEALTHY SOLUTIONS, L.L.C., d/b/a	)	
DIRECT BUSINESS CONCEPTS; ITV	)	
DIRECT, INC.; and DIRECT FULFILLMENT,	)	
LLC,	)	
	)	
Intervenor-Defendants.	)	
	)	

**AFFIDAVIT OF DANIEL J. KELLY**

I, Daniel J. Kelly, being duly sworn, do hereby depose and state that:

I am an attorney in the firm of Gadsby Hannah LLP (“Gadsby Hannah”), and submit this affidavit to the Court in support of Gadsby Hannah LLP’s Motion to Withdraw as counsel for Plaintiff-in-Intervention Cappseals, Inc. (“Cappseals”).

Gadsby Hannah has moved to withdraw because of serious and irreconcilable differences with Cappseals over (a) how they will pay Gadsby Hannah for substantial legal services already provided by the firm in connection with this case, and (b) how they will pay for the cost of this litigation going forward. These differences have made it impossible for Gadsby Hannah to continue to represent Cappseals effectively in this action.

Gadsby Hannah previously advised Cappseals, both orally and in writing, that it would no longer represent Cappseals in this action if these differences were not resolved. Gadsby Hannah made a proposal to resolve such differences, which proposal was not accepted by Cappseals.

Gadsby Hannah also recommended to Cappseals, both orally and in writing, that if these differences could not be resolved Cappseals should seek to retain successor counsel, and further advised that if it did not arrange for successor counsel, the firm would have to file a motion to withdraw.

If the Court deems its necessary, Gadsby Hannah is prepared to submit a more detailed affidavit on this subject, but respectfully requests that its motion be allowed based on the information set forth herein.

Sworn to under the pains and penalties of perjury this 30<sup>th</sup> day of August, 2004.

/s/ Daniel J. Kelly  
Daniel J. Kelly